

Message Text

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E.O. 11652: N/A
TAGS: ELAB, PINT, EFIN, IT
SUBJECT: HOW TO FIRE AN ITALIAN

1. SUMMARY. ITALIAN LAW, AS SUPPLEMENTED BY LABOR AGREE-
MENTS, ENVISIONS THE POSSIBILITY OF DISCHARGING AN EMPLOYEE
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UNDER CAREFULLY PRESCRIBED CONDITIONS. THESE CONDITIONS
CAN BE EITHER SUBJECTIVE (FOR "CAUSE", I.E., AS A RESULT
OF IDENTIFIABLE INFRACTIONS BY THE WORKER), OR OBJECTIVE
("FOR JUSTIFIED REASONS," I.E., PURSUANT TO ECONOMIC OR
PRODUCTION DEVELOPMENTS WHICH CONSTRAIN AN EMPLOYER TO
REDUCE OR EVEN CEASE PRODUCTION).

2. IN PRACTICE, HOWEVER, DISCHARGING A WORKER IS VIRTUALLY IMPOSSIBLE. FOR ONE THING, THE UNIONS FREQUENTLY BRING MASSIVE PRESSURES TO BEAR: AGITATION, WORK STOPPAGES, ETC. FOR ANOTHER, THE MAGISTRATES (THE PRETORI), IMPELLED BY THE IDEOLOGICAL BIAS WHICH EVIDENTLY ANIMATES MOST OF THEM, ALMOST INVARIABLY INTERPRET THE LAW IN FAVOR OF THE WORKER. DISCHARGE ATTEMPTS ARE REJECTED AND EMPLOYERS ARE ORDERED TO RESTORE THE WORKERS TO THE PAYROLL.

3. THE LEGAL PROCEEDINGS AT THE PRETORE LEVEL ARE EXPEDITIOUS, THE JUDGMENT IS QUICKLY RENDERED AND IS IMMEDIATELY ENFORCEABLE. THE APPEAL TO THE TRIBUNALE (THE APPEALS COURT) ALSO TAKES PLACE QUICKLY. FREQUENTLY, THE TRIBUNALE REVERSES THE FINDING OF THE MAGISTRATE. THE RUB COMES AT THE FINAL LEVEL OF APPEAL. NO TIMING FOR SUPREME COURT HANDLING OF THESE CASES IS LAID DOWN IN LAW. CONSEQUENTLY, THE FINAL APPEAL PROCEDURE TAKES A MINIMUM OF THREE TO FOUR YEARS.

4. A DIRECT EFFECT OF THIS EXPERIENCE IS THAT EMPLOYERS ARE DISINCLINED TO HIRE ADDITIONAL WORKERS, EVEN IF ECONOMIC EXPANSION APPEARS POSSIBLE. IN HIRING A WORKER, THEY (RIGHTLY) FEAR THEY WILL HAVE ACQUIRED A LIFETIME DEPENDANT. END SUMMARY.

5. LAW NO. 604 OF JULY 15, 1966 INTRODUCED SIGNIFICANT LIMITED OFFICIAL USE

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RESTRICTIONS ON EMPLOYERS IN THE TERMINATION OF WORKERS. IT ABOLISHED THE PROVISIONS OF ARTICLE 2118 OF THE CIVIL CODE, THROUGH WHICH AN EMPLOYER COULD TERMINATE A WORKER REGARDLESS OF THE CAUSE PROVIDING ONLY THAT CERTAIN PROCEDURES SUCH AS NOTICE PERIOD AND TERMINAL RENUMBERATION WERE OBSERVED.

6. UNDER LAW 604, AS FURTHER ELABORATED BY LAW NO. 300 OF MAY 30, 1970 (THE OMNIBUS BILL KNOWN AS THE "WORKERS' STATUTE?), NO WORKER MAY BE DISMISSED WITHOUT A "JUST CAUSE" OR FOR "JUSTIFIED REASONS". ARTICLE 3 OF LAW 604 REFINES THE CRITERIA. IT IDENTIFIES A) DISMISSAL DUE TO "SUBJECTIVE" REASONS, I.E., WHEN THE DISMISSAL IS OF AN INDIVIDUAL WORKER PURSUANT TO AN INFRACTION OR A FAILURE TO FULFILL CONTRACTUAL OBLIGATIONS, AND B) DISMISSAL DUE TO "OBJECTIVE" REASONS, WHEN THE DISMISSAL IS CONNECTED WITH THE COMPANY'S PRODUCTIVE ACTIVITY, ITS WORK PLANNING AND THE REGULAR OPERATION THEREOF AND HAS NO DIRECT RELEVANCE TO THE BEHAVIOR OF THE INDIVIDUAL WORKER. BOTH DOCTRINE AND JURISPRUDENCE HAVE MADE A FURTHER DISTINCTION AMONG "OBJECTIVE" REASONS: INDIVIDUAL DISMISSALS DUE TO, SAY, THE ABOLITION OF A JOB DERIVING

FROM TECHNOLOGICAL CHANGE, AND COLLECTIVE OR PLURAL
DISMISSALS DERIVING FROM, SAY, THE NEED TO IMPLEMENT
WORK FORCE REDUCTIONS DUE TO LESSENER ECONOMIC PROFIT-
ABILITY OR COMPETITIVITY.

7. ARTICLE 11 OF LAW 604, STRESSES THAT "COLLECTIVE
DISMISSALS DUE TO REDUCTION IN FORCE SHALL NOT BE
SUBJECT TO THE PROVISIONS OF THIS LAW." IN FACT, NO
OTHER LAW APPLIES TO COLLECTIVE DISMISSALS EITHER. THIS
SEEMING VOID IS FILLED IN SEVERAL WAYS, NOTABLY THROUGH
COLLECTIVE BARGAINING. IN ITALY, COLLECTIVE AGREEMENTS
IN THE PRIVATE SECTOR ARE NOT LEGAL DOCUMENTS, ARE NOT
ENFORCEABLE IN COURT. IN PRACTICE, HOWEVER, WHEN SUIT
IS BROUGHT ON MATTERS INVOLVING COLLECTIVE AGREEMENTS,
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THE MAGISTRATES "TAKE INTO ACCOUNT" THE TERMS OF THE
CONTRACTS AND ALMOST INVARIABLY RENDER JUDGMENTS
IN ACCORDANCE WITH THEIR PROVISIONS.

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8. IN CASES OF (PERFECTLY LEGAL) COLLECTIVE DISMISSALS, WHERE NO CONTACTUAL AGREEMENTS MAY PERTAIN (OR EVEN IN MANY CASES WHERE COLLECTIVE AGREEMENTS PROVIDE FOR THE POSSIBILITY OF SUCH DISMISSALS), THE AFFECTED WORKERS ROUTINELY SUE. IN THE ABSENCE OF DIRECT LEGAL FOUNDATION, MAGISTRATES HAVE FREQUENTLY TREATED REDUCTIONS IN FORCE LIMITED OFFICIAL USE

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AS A SERIES OF INDIVIDUAL DISMISSALS, I.E., REQUIRING EMPLOYERS TO JUSTIFY THE DISMISSAL OF EACH INDIVIDUAL INVOLVED, UNDER THE PROVISIONS FOUND IN LAW 604. NEED-LESS TO SAY, THIS FLIES DIRECTLY IN THE FACE OF ART. 11 OF LAW 604 WHICH, AS NOTED, SPECIFICALLY EXEMPTS COLLECTIVE DISMISSALS FROM THE LAW.

9. THE TYPICAL PROCEDURE IS THIS: WITHIN FIVE DAYS OF THE COMPLAINT, THE PRETORE FIXES A DATE FOR A HEARING, NO MORE THAN 60 DAYS FROM THE FILING OF THE COMPLAINT. THE DEPENDANT'S BRIEF MUST BE SUBMITTED AT LEAST 10 DAYS BEFORE THE HEARING. HEARINGS ARE TO BE NO MORE THAN ONE OR TWO IN NUMBER, NO MORE THAN TEN DAYS APART. THE PRETORE MAY MAKE FINANCIAL AWARDS EVEN BEFORE HIS OWN FINDINGS ARE COMPLETED. MANEY AWARDS TO PLAINTIFFS ARE TO INCLUDE INTEREST AND ADJUSTMENT FOR POSSIBLE DEVALUATION.

10. THE PRETORE'S DECISION IS FILED WITHIN 15 DAYS OF THE TIME WHEN IT IS RENDERED. WITHIN THE NEXT 30 DAYS, THE APPEAL TO THE TRIBUNALE (THE APPEALS COURT), MUST BE MADE. THE TRIBUNALE DECISION, BASED ON BRIEFS AS EXPANDED BY EXPLANTORY DISCUSSION, MUST BE MADE WITHIN 60 DAYS OF THE FILING OF THE APPEAL. BUT THEN COMES THE RUB: THE LAW PRESCRIBES NO TIMING FOR APPEALS PROCEDURES TO THE SUPREME (CASSATION) COURT. THE DOCKETS OF THE SUPREME COURT BEING OVERLOADED, THE TYPICAL WAITING TIME FOR ULTIMATE DISPOSITION OF LABOR DECISIONS IS THREE TO FOUR YEARS. KNOWING THAT, EVEN IF HE GETS A FAVORABLE RULING AFTER FOUR YEARS, HE MIGHT BE SUBJECT TO MASSIVE STRIKE ACTIONS IF HE SEEKS TO GO THROUGH WITH A DISCHARGE ACTION,

IT IS A RARE EMPLOYER WHO UNDERTAKES THIS COMPLETE
CYCLE OF LEGAL ACTIONS IN SEEKING TO REDUCE HIS WORK
FORCE.

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11. COMMENT. APART FROM THE TRAVAILS OF THE COURT
SYSTEM, AN EMPLOYER WHO SEEKS TO SHUT DOWN OR GO OUT
OF BUSINESS MAY ALSO FACE THE REQUISITIONING OF HIS
PLANT. THERE HAVE BEEN A FEW CASES IN WHICH CIVIC
OFFICIALS HAVE TAKEN SUCH A STEP THROUGH STRAINED RE-
COURSE TO THE CONSTITUTION. THE REQUISITIONING OF THE
AMERICAN-OWNED TORRINGTON PLANT IN GENOA IS A CASE IN
POINT (SEE GENOA'S 0272 NOTAL AND PREVIOUS).

12. INABILITY TO REDUCE THE WORK FORCE IS NOT THE ONLY
DISINCENTIVE FOR MANAGEMENT TO HIRE MORE WORKERS,
THOUGH IT IS PROBABLY THE MAJOR ONE. (ONE MUST ALSO
NOTE THAT NORMAL ATTRITION RATES IN ITALIAN INDUSTRY
ARE PARTICULARLY LOW). OTHER DISINCENTIVES INCLUDE LACK
OF CONFIDENCE IN THE POLITICAL SITUATION, THE HIGH COST
OF LABOR AND UNION ATTITUDES ON LABOR MOBILITY (THEY'RE
AGAINST IT).

13. THE ENTREPRENEUR MAY DERIVE SOME SMALL CONSOLATION
IN KNOWING THAT EVEN THE UNIONS OCCASIONALLY CHAFE UNDER
THE INABILITY TO DISCHARGE WORKERS. THE LABOR ATTACHE,
IN REVIEWING INFORMALLY THE CONCLUSIONS DRAWN IN THIS
REPORT WITH GIORGIO BENVENUTO, SECRETARY GENERAL OF THE
LABOR CONFEDERATION UIL, LEARNED THAT THE LATTER HAS THE
SAME PROBLEM IN HIS ORGANIZATION. THERE ARE A NUMBER
OF PEOPLE THERE WHOM BENVENUTO WOULD LIKE TO FIRE
(HE SAYS THAT ON A TYPICAL DAY, SEVEN OF THE TWELVE
SECRETARIES ARE OUT SICK), BUT HE IS STUCK WITH THEM.
BASED ON THESE EXPERIENCES, BENVENUTO INDICATED A
WILLINGNESS TO LEND HIMSELF TO A REFORM OF THE
SYSTEM, WHICH WOULD BE THE FIRST LIGHT SEEN IN THAT
TUNNEL FOR A LONG TIME.

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